



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

On August 31, 2016 a hearing was conducted via the direct request process (an ex parte proceeding) between these two parties. The landlord applied for an order of possession and a monetary order for unpaid rent. The landlord was granted an order of possession and a monetary order for unpaid rent. The tenant applied for a review of this decision and a review hearing was granted where the original decision dated August 31, 2016 was suspended. A notice of a review hearing was served to the tenant with a copy of the review consideration decision to serve the landlord.

This is a review hearing granted for the landlords' application pursuant to the *Residential Tenancy Act* (the Act) for:

- an order of possession for cause, pursuant to section 55;
- a monetary order for unpaid rent or utilities pursuant to section 67.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed receipt of the notice of a review hearing and the submitted documentary evidence. As both parties have attended and have confirmed receipt of the notice of a review hearing and the submitted documentary evidence, I am satisfied that both parties are sufficiently served as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?
Is the landlord entitled to a monetary order for unpaid rent?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties confirmed that the landlord served the tenant with the 10 Day Notice for Unpaid Rent (the 10 Day Notice) dated August 8, 2016 by posting it to the tenant's rental unit door on August 8, 2016. The landlord has also provided a copy of a proof of service document which confirms that a witness was present confirming service in this manner on August 8, 2016. The 10 Day Notice sets out that the tenant failed to pay rent of \$3,000.00 (\$1,500.00 for July and \$1,500.00 for August) that was due on August 1, 2016. The 10 Day Notice also sets out an effective end of tenancy date of August 18, 2016.

The landlord's counsel (the landlord) stated that a late rent payment of \$1,600.00 which consists of two money orders for \$999.99 and a second for \$601.01 was given to the landlord on August 12, 2016. The landlord provided copies of the money orders dated August 12, 2016. The landlord stated that this is confirmed in the letter dated August 24, 2016 to the tenant that the late payment was accepted for use and occupancy only.

The landlord seeks an order of possession and a monetary order for unpaid rent of \$1,400.00. The landlord clarified that the tenant had made a late payment of \$1,600.00 on August 12, 2016, but that no further rent payments have been made since.

The tenant disputes the landlords claim stating that rent for July and August were paid. The tenant stated that she had obtained a cash advance from her employer in order to pay the rent and confirms that the money orders totalling \$1,600.00 were made on August 12, 2016, but that a further cash payment of \$1,600.00 was paid to the landlord on August 13, 2016. The tenant clarified that her friend, J.W. had paid the landlord on her behalf on both occasions. The witness, J.F. stated that she felt unsafe carrying that much cash, so when she was unable to pay the landlord the rent in person the witness obtained two money orders and placed them in the landlord's mail slot. The witness also stated that she returned on August 13, 2016 and paid a further \$1,600.00 in cash to the landlord in person who did not provide a receipt.

The landlord disputed the witness's claim calling into question the witness's credibility. The tenant and her witness both stated that previous payments of cash were made to the landlord in which no receipts were issued. The landlord disputes this stating that the primary form of payment of rent was through interact etransfer payments. The landlord has submitted copies of 6 interact etransfer payments in support of his claim that the

tenant's evidence was not credible. The landlord has also submitted in support a copy of an untitled message to the landlord from the tenant which states in part,

...This will go to u 3000 of it. For sept and oct rent...I have also ordered checks so that I can give u post dated checks...So when I see u tomorrow I will have the remaining money owed for this month as well as 3000 for sept and oct. as well as post dated checks...

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I accept the undisputed affirmed evidence of both parties and find that the tenant was properly served with the 10 Day Notice dated August 8, 2016 by posting it to the rental unit door. I also find that as the 10 Day Notice was confirmed posted to the rental unit door that the tenant is deemed served as per section 89 of the Act 3 days later on August 11, 2016. As such, the effective end of tenancy date on the 10 Day Notice is corrected to August 21, 2016.

I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant. I find it unlikely that the tenant's witness would provide only ½ of the rent owed (\$1,600.00) in two money orders to the landlord on August 12, 2016, if she felt unsafe carrying that much cash on her person. It is further unlikely that the same person would return the next day with \$1,600.00 in cash to pay the landlord in person. The tenant has relied solely on the statement of the witness and has not provided any evidence to support her claim that a cash advance of \$3,000.00 was given by her employer to pay her rental arrears.

I find that the tenant failed to pay the outstanding rent of \$3,000.00 within five days of receiving the 10 Day Notice. The tenant only paid \$1,600.00 as confirmed by the landlord.

I find that the landlord is entitled to a two-day order of possession. The landlord will be given a formal order of possession which must be served on the tenant(s). If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this order in the Supreme Court of British Columbia.

As for the landlord's monetary claim, I find based upon the above noted that the tenant has not made any further rent payment for August of the remaining \$1,400.00. The landlord has established a claim for a monetary order of \$1,400.00.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$1,400.00 in unpaid rent.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 30, 2016

Residential Tenancy Branch